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ENZO BIOCHEM, INC.
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NEW YORK NY 10022

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In re Application of :
Engelhardt et al. :
Application No. 08/486,069 :
Filed: June 7, 1995 : ON PETITION
Attorney Docket No. ENZ-5(D8) (C2) :

This is a decision on the petition filed, August 10, 2009, requesting that the order to show cause mailed on June 8, 2009 be vacated.

The record of this application and petitioners' response to the order to show cause have been reviewed and considered. The record of this application does **not** indicate that the abandonment of the application occurred despite the exercise of reasonable due care or diligence on the part of the applicant. See *In re Mattullath*, 38 App. D.C. 497, 514-15 (1912), and *Ex parte Pratt*, 1887 Dec. Comm'r Pat. 31, 32-33 (1887). The petition to revive this application, however, is not under the "unavoidable" standard of 35 U.S.C. § 133 and 37 CFR 1.137(a), but is under the "unintentional" standard of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). Therefore, the Office of the Commissioner for Patents is terminating the inquiry initiated by the order to show cause of June 8, 2009 without vacating or otherwise disturbing the decision reviving the above-identified application.

The petition is **granted** to the extent that the Office of the Commissioner for Patents will **not** vacate or otherwise disturb the decision reviving the above-identified application.

As this inquiry has been terminated without vacating or otherwise disturbing the decision reviving the above-identified application, petitioners' request that the order to show cause be "vacated" is **dismissed** as moot.

It is brought to petitioners' attention that this application is related to an interference proceeding before the Board of Patent Appeals and Interferences (BPAI). Petitioners are reminded that the determinations made during an ex parte proceeding such as in this decision are not binding in a subsequent inter partes proceeding, such as the interference proceeding pending before the BPAI. See, e.g., *In re Stark*, 453 F.2d 1401, 1407 (CCPA 1972), and *Switzer v. Sockman*, 333 F.2d 935, 940-43 (CCPA 1964).

Telephone inquiries regarding this decision may be directed to Senior Petitions Attorney Nancy Johnson at 571-272-3219.



Charles Pearson
Director
Office of Petitions